

## **REMARKS**

Claims 1-11, 13-22, 25 and 26 are pending in this application. No claims have been added. No claims have been cancelled by this Amendment. Therefore, after entry of this Amendment, claims 1-11, 13-22, 25 and 26 will be pending in the instant application.

In response to Appeal Brief on Second Appeal, the Examiner again reopened the prosecution.

### ***Claim Rejections – 35 U.S.C. § 112***

Claim 25 has been rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. There is insufficient antecedent basis for “the number of data transmissions” in the claim. Applicants have amended claim 25 to provided antecedent basis.

### ***Claim Rejections – 35 U.S.C. § 103***

Claims 1-3, 7-11, 13, and 17-20 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Catreux et al. (United States Patent Publication Number 2005/0053170A1) in view of Jasper et al. (United States Patent Number 6,201,955). Applicants respectfully traverse this rejection.

Claims 1-3, 7-11, 13, and 17-20 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Catreux et al. (United States Patent Publication Number 2005/0053170A1) in view of Jasper et al. (United States Patent Number 6,201,955), and further in view of Horng et al. (United States Patent Publication Number 2004/0032910A1), . Applicants respectfully traverse this rejection.

Catreux et al. as presented in United States Patent Publication Number 2005/0053170A1 has a filing date of July 29, 2004. Catreux et al. claims priority to

Provisionals 60/491,128 filed on July 29, 2003 and 60/485,915 filed on September 17, 2003.

It remains legally insufficient to conclude that a claim is obvious just because each feature of a claim can be independently shown in the cited art. The Examiner must provide a sufficient rationale for an asserted combination. KSR requires that an Examiner provide "some articulated reasoning with some rationale underpinning to support the legal conclusion of obviousness" (*KSR INT'L CO. v. TELEFLEX INC.* 127 S. Ct. 1727 (2007) at page 14). Examiner failed to establish a prima facie case for obviousness. Examiner has failed to include a statement regarding the correspondence between the Catreux et al. patent application and its underlying provisional applications. Because Examiner never provided a factual finding that both documents "clearly show the same subject matter, the Examiner has failed to shift the burden to Appellants to show why such a factual finding was erroneous.

By providing the required factual finding and shifting burden to Applicants, the Applicants can continue prosecution to show prior invention before July 29, 2003 via a 131 Declaration.

Should the Examiner have any further comments or suggestions, it is respectfully requested that the Examiner contact the undersigned in order to expeditiously resolve any outstanding issues.

Please charge any fees, or credit overpayment to Deposit Account No. 20-0668.

Respectfully submitted:

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